

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

**J.B.D.L. Corp. d/b/a
BECKETT APOTHECARY, et al.**
Plaintiffs,

v.

WYETH

Defendant.

**CVS MERIDIAN, INC. and
RITE AID CORPORATION,**
Plaintiffs,

v.

WYETH

Defendant.

NO. C-1-01-704

Judge Sandra S. Beckwith
Magistrate Judge Timothy S. Hogan

No. C-1-03-781

Judge Sandra S. Beckwith

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF
CVS MERIDIAN, INC. AND RITE AID CORPORATION TO STAY
MAGISTRATE JUDGE'S JUNE 7, 2004 ORDER PENDING APPEAL

Plaintiffs CVS Meridian, Inc. ("CVS") and Rite Aid Corporation ("Rite Aid") submit this memorandum of law in support of their motion requesting a stay pending appeal of that part of the June 7, 2004 Order directing that certain document be produced to Defendant Wyeth.

STATEMENT OF FACTS

On December 23, 2003, Wyeth served Plaintiffs CVS and Rite Aid with first sets of merits-related requests for production of documents. Plaintiffs objected to certain of these requests and on February 27, 2004 Wyeth filed a motion to compel production of documents. Plaintiffs filed a timely opposition to this motion and oral argument was heard by Magistrate Judge Timothy Hogan on April 30, 2004. Magistrate Judge Hogan subsequently issued an Order on June 7, 2004 denying in part Wyeth's motion to compel but granting other portions directing that Plaintiffs produce certain documents. On June 22, 2004 CVS and Rite Aid filed objections to portions of Magistrate Judge Hogan's Order directing that certain document be produced, asking the Court to reverse that portion of the Order.

ARGUMENT

The Magistrate Judge's Order required Plaintiffs to produce certain categories of documents to Defendant Wyeth. In response to the Order, CVS and Rite Aid made production of some of those documents. With respect to two categories of documents, however, Plaintiffs filed timely objections with the District Court asking that the order directing production be reviewed and reversed. These objections essentially relate to only two types of documents: 1) those relating to downstream data/speculative purchasing and 2) contracts between Plaintiffs and managed care organizations relating to Premarin and Cenestin.

Through the present motion, Plaintiffs seek a stay of the Order directing production of these categories of documents. With respect to the documents falling into the first group, Plaintiffs would be required to make a time consuming and wide ranging search of their files in order to satisfy the more than half a dozen document requests posed by Wyeth on the topic of downstream information/speculative purchasing. The burden of such a search would be

substantial and ought to be delayed until such time as the Court has had an opportunity to review the Magistrate's Order. Production of these documents should also be delayed pending a decision in order to avoid an unnecessary production. In the event that Plaintiffs' objections are sustained, absent a stay, Plaintiffs will have been forced to undertake a substantial and burdensome document production that will have been unnecessary and resulted in the production of numerous irrelevant documents. Furthermore, there is a substantial likelihood that production will not ultimately be required, given the fact that there is a large body of case law (discussed in the brief supporting the Plaintiffs' objections) holding that in an anti-trust case such as this, in which Plaintiffs' seek only over-charge damages, downstream information need not be produced. Finally, it does not appear that Wyeth will suffer any prejudice if production of these documents is deferred pending the Court's decision.

Most of these same arguments apply to the second category of documents, the contracts between Plaintiffs and managed care organizations. As discussed in the brief supporting the objections, the documents sought have no connection to Wyeth's stated justification for their production and they are, therefore, entirely irrelevant. The burden of producing these numerous contracts should be deferred pending the Court's decision and Wyeth will suffer no prejudicial impact by this short delay.

CONCLUSION

For the foregoing reasons, Plaintiffs CVS Meridian, Inc. and Rite Aid Corporation respectfully request that their motion for stay be granted.

Respectfully submitted,



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Dated: October 26, 2004

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served this 26th day of October, 2004 via facsimile and first class mail.

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